

AO 120 (Rev. 08/10)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas, Marshall Division on the following

☐ Trademarks or ☒ Patents. ( ☒ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 2:11-cv-00024-TJW	DATE FILED 1/20/2011	U.S. DISTRICT COURT Eastern District of Texas, Marshall Division
PLAINTIFF Main Hastings LLC		DEFENDANT First Citizens Bancshares, Inc., et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,561,707	10/1/1996	Ronald A. Katz Technology Licensing L.P.
2 5,828,734	10/27/1998	Ronald A. Katz Technology Licensing L.P.
3 5,684,863	11/4/1997	Ronald A. Katz Technology Licensing L.P.
4 5,815,551	9/29/1998	Ronald A. Katz Technology Licensing L.P.
5 5,974,120	10/26/1999	Ronald A. Katz Technology Licensing L.P.

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED 3/4/2011	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,917,893	6/29/1999	Ronald A. Katz Technology Licensing L.P.
2 5,898,762	4/27/1999	Ronald A. Katz Technology Licensing L.P.
3 5,128,984	7/7/1992	First Data Resources Inc.
4 5,265,007	11/23/1993	Huntington Bancshares Incorporated
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

5,128,984 ("the '984 Patent") and U.S. Patent No. 5,265,007 ("the '007 Patent").

33. Figure 2 below shows a copy of the Defendant IronStone Bank's banking and e-commerce website listing the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent. Further, attached as Exhibits A-I are true and correct copies of the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent.

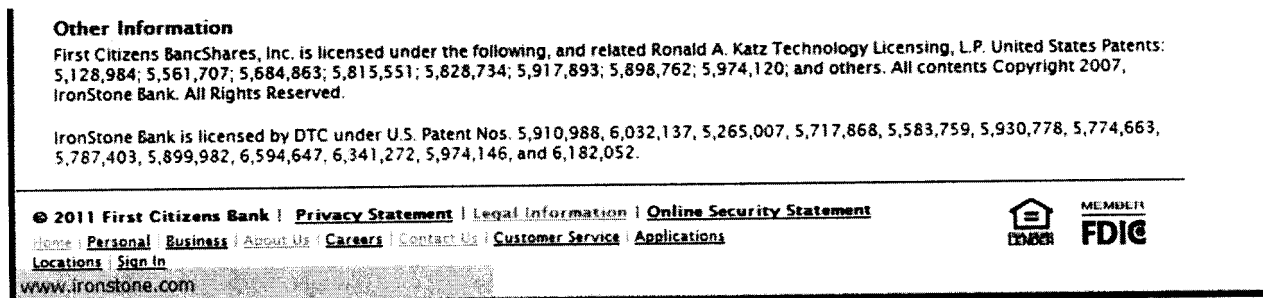


Figure 2 – Picture of Defendant IronStone Bank's Website Displaying the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent.

34. The '707 Patent, entitled "Telephonic-interface statistical analysis system," was filed on October 18, 1993, and issued on October 1, 1996. The '707 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 5,255,309.

35. The '734 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on October 4, 1993, and issued on October 27, 1998. The '734 Patent expired October 5, 2010 due to patent term disclaimer as provided and evidenced on the face of the patent.

36. The '863 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on November 4, 1997. The '863 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

37. The '551 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on September 29, 1998. The '551 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

38. The '120 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on June 7, 1995, and issued on October 26, 1999. The '120 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

39. The '893 Patent, entitled "Multiple format telephonic interface control system," was filed on June 7, 1995, and issued on June 29, 1999. The '893 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

40. The '762 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 6, 1995, and issued on April 27, 1999. The '762 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

41. The '984 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on October 23, 1989, and issued on July 7, 1992. The '984 Patent expired July 7, 2009.

42. The '007 Patent, entitled "Central check clearing system," was filed on August 7, 1989, and issued on November 23, 1993. The '007 Patent expired November 23, 2010.

#### **CAUSES OF ACTION FOR FALSE PATENT MARKING**

43. Main Hastings incorporates by reference the foregoing paragraphs as if fully set forth herein.

44. Defendants are sophisticated companies with experience applying for, obtaining, and/or litigating patents, and therefore know that patents do not have unlimited scope, but rather, have a scope limited to that which is claimed, and that all patents expire and that all monopoly rights in a patent terminate irrevocably when it expires.

45. Defendants have or regularly retain, sophisticated legal counsel.

46. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

47. Defendants' false marking of their products has wrongfully quelled competition with respect to such products thereby causing harm to Main Hastings, the United States, and the public.

48. Defendants have wrongfully and illegally advertised patent monopolies that they do not possess and, as a result, have benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

49. Defendants know that patents provide the patent holder extreme market power to monopolize the invention.

50. Defendants know that all patents expire and that all monopoly rights in a patent terminate irrevocably when it expires.

51. As set forth in detail herein, and/or for other reasons that will be later evidenced, Defendants have falsely marked the products described below, with the intent to deceive the public, in violation of 35 U.S.C. §292. Despite the easily modifiable digital format of the Defendants' banking and e-commerce websites and one or more revisions to such websites since the expiration of the subject patents as evidenced by the updated 2011 copyright notice dates on such websites, Defendants have nevertheless knowingly and repeatedly used and continue to use the expired patents in marking, offering for sale and/or advertising their products, with intent to deceive the public.

**COUNTS 1-9: FALSE MARKING ON DEFENDANTS' PRODUCTS**

**COUNT 1: THE '707 PATENT**

52. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

53. As noted above in paragraph 21, the '707 Patent is expired. Because the '707 Patent is expired, any product once covered by the '707 Patent is no longer protected by the patent laws of the United States. When the '707 Patent expired, its formerly protected property entered the public domain.

54. Despite the fact the '707 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '707 Patent.

55. Despite their knowledge of patent law and the current status of the '707 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '707 Patent. Defendants knew or reasonably should have known that marking their products with the '707 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

56. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

57. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '707 Patent.

#### **COUNT 2: THE '734 PATENT**

58. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

59. As noted above in paragraph 22, the '734 Patent is expired. Because the '734 Patent is expired, any product or method once covered by the claims of the '734 Patent is no longer protected by the patent laws of the United States. When the '734 Patent expired, its

formerly protected property entered the public domain.

60. Despite the fact that the claims of the '734 Patent are no longer afforded patent protection, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '734 Patent.

61. Despite their knowledge of patent law and the current status of the '734 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '734 Patent. Defendants knew or reasonably should have known that marking their products with the '734 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

62. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

63. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '734 Patent.

### **COUNT 3: THE '863 PATENT**

64. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

65. As noted above in paragraph 23, the '863 Patent is expired. Because the '863 Patent is expired, any product or method once covered by the claims of the '863 Patent is no longer protected by the patent laws of the United States. When the '863 Patent expired, its formerly protected property entered the public domain.

66. Despite the fact that the claims of the '863 Patent are no longer afforded patent protection, Defendants have and continue to mark (or cause to be marked) various products,

including their First Citizens and IronStone Bank banking and e-commerce websites, with the '863 Patent.

67. Despite their knowledge of patent law and the current status of the '863 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '863 Patent. Defendants knew or reasonably should have known that marking their products with the '863 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

68. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

69. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '863 Patent.

#### **COUNT 4: THE '551 PATENT**

70. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

71. As noted above in paragraph 24, the '551 Patent is. Because the '551 Patent is expired, any product once covered by the '551 Patent is no longer protected by the patent laws of the United States. When the '551 Patent expired, its formerly protected property entered the public domain.

72. Despite the fact the '551 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '551 Patent.

73. Despite their knowledge of patent law and the current status of the '551 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being

covered by the '551 Patent. Defendants knew or reasonably should have known that marking their products with the '551 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

74. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

75. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '551 Patent.

**COUNT 5: THE '120 PATENT**

76. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

77. As noted above in paragraph 25, the '120 Patent is expired. Because the '120 Patent is expired, any product or method once covered by the claims of the '120 Patent is no longer protected by the patent laws of the United States. When the '120 Patent expired, its formerly protected property entered the public domain.

78. Despite the fact that the claims of the '120 Patent are no longer afforded patent protection, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '120 Patent.

79. Despite their knowledge of patent law and the current status of the '120 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '120 Patent. Defendants knew or reasonably should have known that marking their products with the '120 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a



“patented” article.

80. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

81. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the ‘120 Patent.

**COUNT 6: THE ‘893 PATENT**

82. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

83. As noted above in paragraph 26, the ‘893 Patent is expired. Because the ‘893 Patent is expired, any product once covered by the ‘893 Patent is no longer protected by the patent laws of the United States. When the ‘893 Patent expired, its formerly protected property entered the public domain.

84. Despite the fact the ‘893 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the ‘893 Patent.

85. Despite their knowledge of patent law and the current status of the ‘893 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the ‘893 Patent. Defendants knew or reasonably should have known that marking their products with the ‘893 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a “patented” article.

86. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

87. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be

marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '893 Patent.

**COUNT 7: THE '762 PATENT**

88. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

89. As noted above in paragraph 27, the '762 Patent is expired. Because the '762 Patent is expired, any product once covered by the '762 Patent is no longer protected by the patent laws of the United States. When the '762 Patent expired, its formerly protected property entered the public domain.

90. Despite the fact the '762 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '762 Patent.

91. Despite their knowledge of patent law and the current status of the '762 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '762 Patent. Defendants knew or reasonably should have known that marking their products with the '762 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

92. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

93. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '762 Patent.

**COUNT 8: THE '984 PATENT**

94. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

95. As noted above in paragraph 28, the '984 Patent is expired. Because the '984 Patent is expired, any product once covered by the '984 Patent is no longer protected by the patent laws of the United States. When the '984 Patent expired, its formerly protected property entered the public domain.

96. Despite the fact the '984 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '984 Patent.

97. Despite their knowledge of patent law and the current status of the '984 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '984 Patent. Defendants knew or reasonably should have known that marking their products with the '984 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

98. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

99. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '984 Patent.

**COUNT 9: THE '007 PATENT**

100. The Plaintiff incorporates and restates the allegations of Paragraphs 1-51.

101. As noted above in paragraph 29, the '007 Patent is expired. Because the '007 Patent is expired, any product once covered by the '007 Patent is no longer protected by the patent laws of the United States. When the '007 Patent expired, its formerly protected property entered the public domain.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MAIN HASTINGS LLC,

*Plaintiff,*

v.

**FIRST CITIZENS BANCSHARES, INC.;  
FIRST CITIZENS BANK AND TRUST  
COMPANY; AND IRONSTONE BANK**

*Defendants.*

§ § § § § § § § § § § § § § § §

Civil Action No.

## Jury Trial Demanded

## COMPLAINT FOR FALSE PATENT MARKING

Plaintiff Main Hastings LLC, (“Main Hastings”), by its attorneys, hereby complains against Defendants First Citizens BancShares, Inc. (“First Citizens Bancshares”), First-Citizens Bank & Trust Company ("First Citizens") and IronStone Bank (“IronStone”) and alleges as follows:

### NATURE OF THE CASE

1. This is a *qui tam* action on behalf of the public for false patent marking under 35 U.S.C. §292.

2. As set forth below, Defendants have violated 35 U.S.C. §292(a), by marking certain of their products with the purpose of deceiving the public. More specifically, Defendants have, with the purpose of deceiving the public, marked products with patents that have expired and, therefore, do not and cannot cover the marked products.

3. The false marking statute exists to give the public notice of patent rights. Congress intended the public to rely on marking as a ready means of discerning the status of intellectual property embodied in an article of manufacture or design. Federal patent policy

102. Despite the fact the '007 Patent is no longer in force, Defendants have and continue to mark (or cause to be marked) various products, including their First Citizens and IronStone Bank banking and e-commerce websites, with the '007 Patent.

103. Despite their knowledge of patent law and the current status of the '007 Patent, Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '007 Patent. Defendants knew or reasonably should have known that marking their products with the '007 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

104. Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

105. Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, pages of their First Citizens and IronStone Bank banking and e-commerce websites with the '007 Patent.

#### **DAMAGES**

106. The Plaintiff incorporates and restates the allegations of Paragraphs 1-105.

107. Upon information and belief, Defendants know, or reasonably should know, that marking their products with false patent statements was and is illegal under Title 35 of the United States Code.

108. Each falsely marked product is a separate "offense" pursuant to 35 U.S.C. §292(a).

#### **PRAYER FOR RELIEF**

109. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendant as follows:

110. A decree that Defendants have falsely marked products in violation of 35 U.S.C. § 292;

111. An award of monetary damages, pursuant to 35 U.S.C. § 292, in the form of a civil monetary fine of \$500 per false marking “offense,” or an alternative amount as determined by the Court, one half of which should be paid to the United States of America and one-half of which shall be paid to Main Hastings;

112. An accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products;

113. Enter a judgment and order requiring each Defendant to pay Main Hastings prejudgment and post-judgment interest on the damages awarded;

114. Order Defendants to pay Main Hastings’ costs and attorney fees; and

115. Grant Main Hastings such other and further relief as it may deem just and equitable.

**DEMAND FOR JURY TRIAL**

116. Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff hereby demands a jury trial on all issues triable by jury.

Dated: January 20, 2011

Respectfully submitted,

/s/ Winston O. Huff

Winston O. Huff, Attorney in Charge  
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Huff Legal Group, P.C.  
2500 Dallas Parkway, Suite 260  
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ATTORNEYS FOR PLAINTIFF  
MAIN HASTINGS, LLC

**CERTIFICATE OF FILING**

I hereby certify that on January 20, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

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**CERTIFICATE OF SERVICE**

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 20th day of January, 2011.

/s/ Winston O. Huff

recognizes an important public interest in permitting full and free competition in the use of ideas that are, in reality, a part of the public domain.

4. False patent marking – including representing through advertisement that a product is covered by a patent that has expired - is a serious problem. Acts of false marking deter innovation and stifle competition in the marketplace. If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement. False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete. Furthermore, false marking misleads the public into believing that a patentee controls the article in question (as well as like articles), externalizes the risk of error in the determination, placing it on the public rather than the manufacturer or seller of the article, and increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. In each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into prior art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay. False markings may also create a misleading impression that the falsely marked product is technologically superior to previously available ones, as articles bearing the term “patent” may be presumed to be novel, useful, and innovative.

5. The false marking statute explicitly permits *qui tam* actions. By permitting members of the public to sue on behalf of the government, Congress allowed individuals to help control false marking.

6. Main Hastings, on its own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Defendants' violations of 35 U.S.C. § 292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

#### **THE PARTIES**

7. Main Hastings is a Texas limited liability company.

8. On information and belief, Defendant First Citizens Bancshares is a corporation established under the laws of the State of Delaware with its principal place of business at 4300 Six Forks Road, Raleigh, NC 27608. Defendant First Citizens Bancshares can be served through its registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. On information and belief, Defendant First Citizens Bancshares is registered to do business in Texas and can be served through its registered agent, George H. Singleton, at 200 North Elm, Waxahachie, TX 75165.

9. On information and belief, Defendant First Citizens is a North Carolina-chartered bank with its principal place of business at 4300 Six Forks Road, Raleigh, NC 27609, and is a subsidiary of Defendant First Citizens Bancshares. Defendant First Citizens can be served through its registered agent at CT Corporation, 150 Fayetteville St., Box 1011, Raleigh, NC 27601.

10. On information and belief, Defendant IronStone Bank is a division of Defendant First Citizens by merger which became effective on or about January 7, 2011,

and is a subsidiary of Defendant First Citizens Bancshares. Defendant IronStone Bank, a division of Defendant First Citizens, can be served through Defendant First Citizens' registered agent at CT Corporation, 150 Fayetteville St., Box 1011, Raleigh, NC 27601.

11. Defendants regularly conduct and transact business in Texas, throughout the United States, and within the Eastern District of Texas, themselves and/or through one or more subsidiaries, affiliates, business divisions, or business units.

#### **JURISDICTION AND VENUE**

12. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction over the Defendants. The Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries, offer for sale, sell, mark and/or advertise the products that are the subject of this Complaint in the United States, the State of Texas, and the Eastern District of Texas.

14. Defendants have voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of false marking within the State of Texas and, more particularly, within the Eastern District of Texas.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a), because (i) Defendants' products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District;

and (iii) Defendants are subject to personal jurisdiction in this District, as described above.

16. Main Hastings brings this action under 35 U.S.C. §292(b), which provides that any person may sue for civil monetary penalties for false patent marking.

### **DEFENDANTS' FALSELY MARKED PRODUCTS AND PATENTS**

#### **A. FIRST CITIZENS BANKING AND E-COMMERCE WEBSITE**

17. Defendant First Citizens operates and controls the First Citizens banking and e-commerce website (www.firstcitizens.com). In this Complaint, Defendant First Citizens' "products" means and includes, collectively, the First Citizens banking and e-commerce website and all parts thereof, any and all information or services offered or rendered through the First Citizens banking and e-commerce website, any and all products offered for sale or advertised through the First Citizens banking and e-commerce website and/or any and all other uses and features of the First Citizens banking and e-commerce website.

18. Figure 1 depicted below shows an image of the Defendant First Citizens' banking and e-commerce website:



19. For a period of time, the Defendant First Citizens' banking and e-commerce website has listed, among others, U.S. Patent No. 5,561,707 ("the '707 Patent"), U.S. Patent No.

5,828,734 ("the '734 Patent"), U.S. Patent No. 5,684,863 ("the '863 Patent"), U.S. Patent No. 5,815,551 ("the '551 Patent"), U.S. Patent No. 5,974,120 ("the '120 Patent"), U.S. Patent No. 5,917,893 ("the '893 Patent"), U.S. Patent No. 5,898,762 ("the '762 Patent"), U.S. Patent No. 5,128,984 ("the '984 Patent") and U.S. Patent No. 5,265,007 ("the '007 Patent").

20. Figure 2 below shows a copy of the Defendant First Citizens' banking and e-commerce website listing the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent. Further, attached as Exhibits A-I are true and correct copies of the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent.

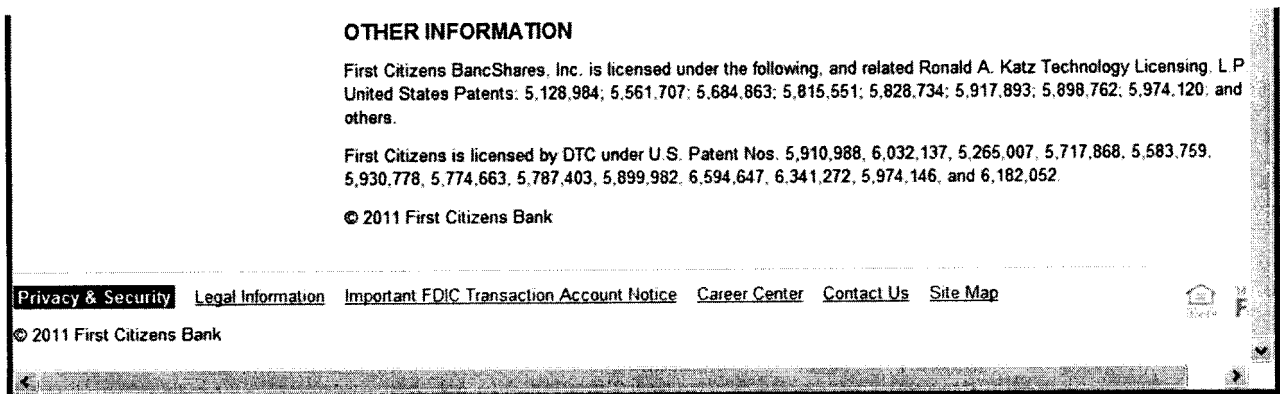


Figure 2 – Picture of Defendant First Citizens' Website Displaying the '707 Patent, the '734 Patent, the '863 Patent, the '551 Patent, the '120 Patent, the '893 Patent, the '762 Patent, the '984 Patent and the '007 Patent.

21. The '707 Patent, entitled "Telephonic-interface statistical analysis system," was filed on October 18, 1993, and issued on October 1, 1996. The '707 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 5,255,309.

22. The '734 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on October 4, 1993, and issued on October 27, 1998. The '734 Patent

expired October 5, 2010 due to patent term disclaimer as provided and evidenced on the face of the patent.

23. The '863 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on November 4, 1997. The '863 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

24. The '551 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 7, 1995, and issued on September 29, 1998. The '551 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

25. The '120 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on June 7, 1995, and issued on October 26, 1999. The '120 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

26. The '893 Patent, entitled "Multiple format telephonic interface control system," was filed on June 7, 1995, and issued on June 29, 1999. The '893 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

27. The '762 Patent, entitled "Telephonic-interface statistical analysis system," was filed on June 6, 1995, and issued on April 27, 1999. The '762 Patent expired December 20, 2005 due to term being disclaimed to term of US Pat. No. 4,845,739.

28. The '984 Patent, entitled "Telephone interface call processing system with call selectivity," was filed on October 23, 1989, and issued on July 7, 1992. The '984 Patent expired July 7, 2009.

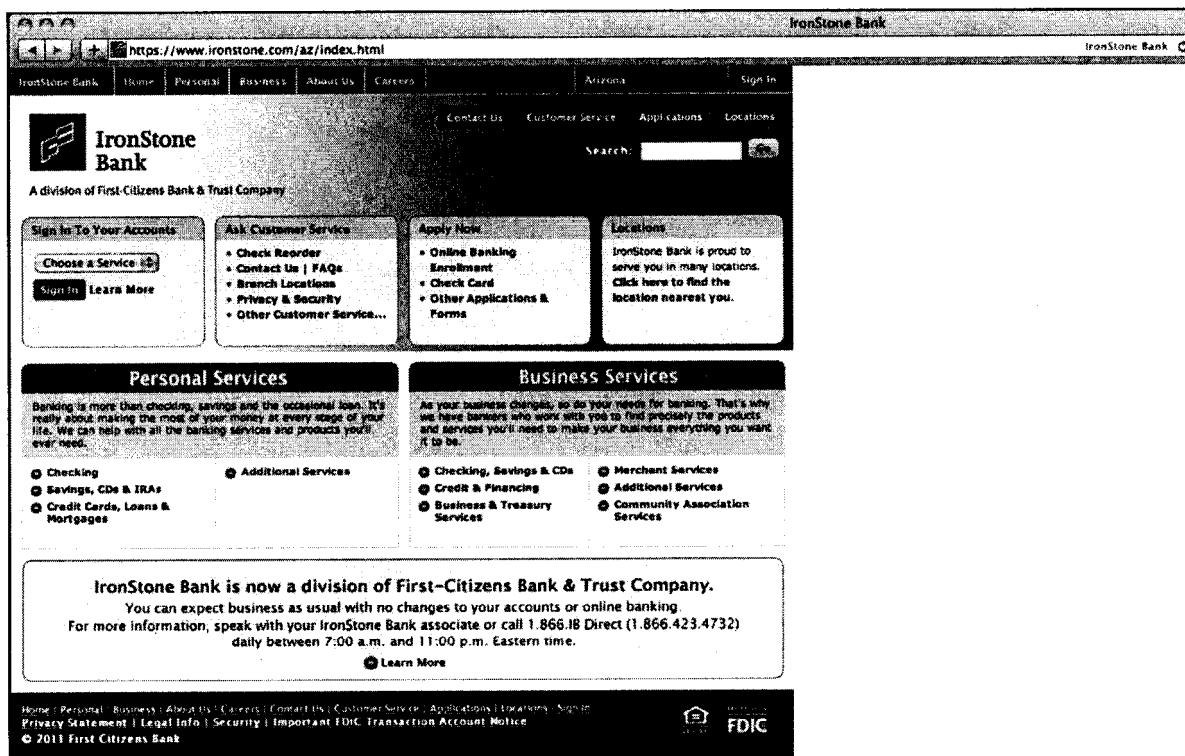
29. The '007 Patent, entitled "Central check clearing system," was filed on August 7, 1989, and issued on November 23, 1993. The '007 Patent expired November 23, 2010.

#### **B. IRONSTONE BANKING AND E-COMMERCE WEBSITE**

30. Defendant IronStone Bank operates and controls the IronStone Bank banking and

e-commerce website (www.ironstone.com). In this Complaint, Defendant IronStone Bank's "products" means and includes, collectively, the IronStone Bank banking and e-commerce website and all parts thereof, any and all information or services offered or rendered through the IronStone Bank banking and e-commerce website, any and all products offered for sale or advertised through the IronStone Bank banking and e-commerce website and/or any and all other uses and features of the IronStone Bank banking and e-commerce website.

31. Figure 1 depicted below shows an image of the Defendant IronStone Bank's banking and e-commerce website:



32. For a period of time, the Defendant IronStone Bank's banking and e-commerce website has listed, among others, U.S. Patent No. 5,561,707 ("the '707 Patent"), U.S. Patent No. 5,828,734 ("the '734 Patent"), U.S. Patent No. 5,684,863 ("the '863 Patent"), U.S. Patent No. 5,815,551 ("the '551 Patent"), U.S. Patent No. 5,974,120 ("the '120 Patent"), U.S. Patent No. 5,917,893 ("the '893 Patent"), U.S. Patent No. 5,898,762 ("the '762 Patent"), U.S. Patent No.